

# Virginia State Corporation Commission

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<b>Case Number (if already assigned)</b>	PUE-2015-00107
<b>Case Name (if known)</b>	Application of Virginia Electric and Power Company For approval and certification of electric transmission facilities: Haymarket 230 kV Double Circuit Transmission Line
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William T. Reisinger  
GreeneHurlocker, PLC  
1807 Libbie Avenue, Suite 102  
Richmond, Virginia 23226  
(804) 672-4546 (Direct)  
[WReisinger@GreeneHurlocker.com](mailto:WReisinger@GreeneHurlocker.com)

160830193

August 26, 2016

**By Electronic Filing**

Mr. Joel H. Peck, Clerk  
State Corporation Commission  
Document Control Center  
300 East Main Street  
Richmond, VA 23219

**RE:   *Application of Virginia Electric and Power Company For approval  
and certification of electric transmission facilities: Haymarket 230 kV  
Double Circuit Transmission Line and 230-34.5 kV Haymarket  
Substation***  
**SCC Case No. PUE-2015-00107**

Dear Mr. Peck:

Pursuant to the Hearing Examiner's August 19, 2016, Ruling, please accept this letter as the Response of the Coalition to Protect Prince William County ("Coalition") to the Objection filed by Dominion Virginia Power ("Dominion" or "Company") on August 18, 2016. The Coalition asks that the Commission reject Dominion's Objection for the following reasons.

**A.     There is no procedural basis for Dominion's filing.**

The Commission's Rules of Practice and Procedure ("Procedural Rules") do not allow for Dominion's Objection. Rule 120 C of the Procedural Rules authorizes "objections" to hearing examiners' rulings. But the Procedural Rules do not authorize a *sua sponte* "Objection" based on a general grievance or displeasure with a post-hearing brief, which is what the Company has submitted in this case. If the Company felt that a portion of Staff's brief should be stricken, the Company could have filed a motion to strike pursuant to Rule 110. Rule 110 of the Procedural Rules provides that "[m]otions may be filed for the same purposes recognized by courts of record in the Commonwealth." But the Company did not do so. Instead, Dominion has filed what is essentially a reply brief for the purpose of rebutting Staff's brief.

Additionally, Dominion's Objection – while not authorized by any rule or order – references only two cases as a basis for the filing. Neither case provides adequate support for Dominion. First, Dominion cites a 2015 transmission line case, Case No. PUE-2014-00025, in which a respondent who did not participate in the evidentiary

hearing in that case attempted to file a "Reply" after post-hearing briefs were submitted.<sup>1</sup> Replies were not permitted by the Hearing Examiner's scheduling order in that case. The respondent's Reply also sought to submit improper hearsay evidence by describing events at a local public hearing. The Hearing Examiner granted the Company's motion to strike due to the fact that the respondent had attempted to file a Reply that was not authorized by any Commission rule or order and that attempted to introduce evidence after the conclusion of the case.<sup>2</sup>

Second, Dominion's Objection cites to a 2013 Commission order in which the Commission stated that it would not consider public witness comments filed after the conclusion of the hearing, in accordance with Rule 80 C of the Procedural Rules.<sup>3</sup> The Commission in that case noted that it would only consider "comments that were submitted in compliance with our Rules and Order for Notice and Hearing."<sup>4</sup>

Ironically, the cases cited by Dominion show why the Commission should not consider the Company's Objection. First, if Dominion wanted to strike a portion of Staff's brief, it should have filed a motion to strike as it did in Case No. PUE-2014-00025. And as the cited cases indicate, the Commission will not consider comments that are not "submitted in compliance with [the Commission's] Rules and Order for Notice and Hearing." Because the Company's filing is not authorized by any Commission rule or order, it should not be considered.

**B. Staff's brief presented options for the Commission's consideration, but did not present "new evidence."**

Dominion alleges that the Staff brief "offers new evidence in its post-hearing brief in support of allocating a large portion of the cost of this transmission project to a single retail customer."<sup>5</sup> Dominion claims that Staff's brief is "unfair."<sup>6</sup> The Coalition does not view Staff's brief as offering new "evidence." In the portions of the brief to which Dominion objects, Staff noted that "[t]he Commission has a number of useful options to address the misallocation of costs."<sup>7</sup> Simply explaining potential options at the Commission's disposal does not constitute the introduction of improper "new evidence." Pursuant to Rule 80 D of the Procedural Rules, Staff is expected to ensure that "pertinent issues on behalf of the general public interest are clearly presented to the commission." Staff appears to have done precisely what it is supposed to do.

<sup>1</sup> Objection at 4 (citing *Application of Virginia Electric and Power Company, For approval and certification of electric facilities: Remington CT-Warrenton 230 kV Double Circuit Transmission Line, et. al*, Case No. PUE-2014-00025, Hearing Examiner's Ruling at 2 (Nov. 4, 2015)).

<sup>2</sup> *Application of Virginia Electric and Power Company, For approval and certification of electric facilities: Remington CT-Warrenton 230 kV Double Circuit Transmission Line, et. al*, Case No. PUE-2014-00025, Hearing Examiner's Ruling at 2 (Nov. 4, 2015).

<sup>3</sup> Objection at 4 (citing *Application of Virginia Electric and Power Company For approval and certification of electric facilities: Surry-Skiffes Creek 500 kV Transmission Line, et. al*, Case No. PUE-2012-00029, Order at 66 (Nov. 26, 2013)).

<sup>4</sup> *Id.*

<sup>5</sup> Objection at 2.

<sup>6</sup> Objection at 3.

<sup>7</sup> Staff Post-Hearing Brief at 18.

Dominion's Objection also alleges that Staff's brief is unfair because "Staff did not present any evidence regarding rate treatment" at the hearing.<sup>8</sup> This claim is puzzling. A very substantial portion of the hearing was devoted to the appropriate method of cost recovery, including extensive discussion of the Company's line extension policy and its potential applicability to the infrastructure at issue. The Company's line extension policy was addressed in opening statements by counsel for Dominion, Staff, and the Coalition. Counsel for Dominion and Staff both examined Staff witness Joshipura at length regarding Staff's interpretation of the Company's line extension policy and how application of the policy could affect the development of the Haymarket Project.<sup>9</sup>

Dominion itself requested the opportunity to file a post-hearing brief particularly so that it could address the legal issues surrounding the Company's line extension policy.<sup>10</sup> Counsel for Dominion also stated at the hearing that the Company would use its post-hearing brief to provide additional evidence regarding this issue, including relevant FERC precedent related to transmission cost recovery.<sup>11</sup> On August 5, 2016, Dominion filed an 81-page post-hearing brief, at least 15 pages of which was devoted to rebutting Staff's testimony regarding the potential applicability of the Company's line extension policy to the Haymarket Project. Dominion has had ample opportunity to address the legal issues in this case and has not been treated unfairly.

Dominion's claim that Staff has improperly introduced new "legal evidence" that prejudices the Company is not credible.

**C. Dominion's "Objection" is a transparent attempt to file a reply brief so that it may have the last word in this matter.**

As discussed above, the rules would have permitted Dominion to file a motion to strike if it felt Staff's brief was improper. But the Company filed what amounts to a reply brief instead. It is clear that Dominion's Objection was filed so that the Company could have the last word on the issue of cost recovery. After spending several paragraphs suggesting that Staff's brief introduced "new evidence," the Company proceeds to make the legal arguments that it wishes it could have made had the Commission's Procedural Rules or Order for Notice and Hearing authorized reply briefs. This should not be permitted. The Hearing Examiner did not authorize sequential briefing. At the Company's request,<sup>12</sup> each participant in this case was given the opportunity to address the legal issues regarding the applicability of the Company's line extension policy in post-hearing briefs. As the Commission precedent cited by Dominion makes clear, the Commission will not entertain reply briefs that are not authorized by the Procedural Rules or Commission order.<sup>13</sup>

<sup>8</sup> Objection at 2.

<sup>9</sup> See, e.g., Tr. 260-284, 304-322.

<sup>10</sup> See Tr. 73 ("[W]e have asked the Hearing Examiner – and I believe you have granted us this opportunity – to provide the briefs to the Commission on this important issue.")

<sup>11</sup> Tr. 75.

<sup>12</sup> Tr. 73.

<sup>13</sup> Objection at 4 (citing *Application of Virginia Electric and Power Company For approval and certification of electric facilities: Surry-Skiffes Creek 500 kV Transmission Line, et. al*, Case No. PUE-2012-00029, Order at 66 (Nov. 26, 2013)).

For the foregoing reasons, the Coalition requests that the Commission not consider Dominion's "Objection" filed on August 18, 2016. Dominion's "Objection" is without merit, not authorized by the Procedural Rules, and appears to be a gambit to have the last word in this case.

Sincerely,

*/s/ William T. Reisinger*

William T. Reisinger

**Counsel for the Coalition to Protect Prince  
William County**

Cc: Service List